

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4038 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

SINDHI SADIKBHAI ISMAILBHAI

Versus

DISTRICT DEVELOPMENT OFFICER

Appearance:

MR JT TRIVEDI for Petitioners

MR NIZAR S. DESAI FOR MR YN OZA for Respondent No.1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 13/08/1999

ORAL JUDGEMENT

The learned counsel for the respondents states that the affidavit in reply deals with only Joshi Manojkumar Kanaiyalal, petitioner No. 2 because at the previous hearing the learned counsel for the petitioners had stated that petitioner No. 1 is not pressing his claim.

2. In this petition under Article 226 of the

Constitution, the petitioner (original petitioner No. 2) has challenged the termination of his services in June, 1986.

3. The petitioner was employed by the Deputy Executive Engineer in the Roads and Buildings, Sub-Division of the Baroda District Panchayat in the year 1981. At the end of 1985, the petitioner's services were not continued. The petitioner, therefore, filed the present petition contending that as mentioned in the certificates at Annexures "A", "B" and "C", the petitioner was working as a daily wager Gujarati Typist since 1982 and that the petitioner's services were found to be satisfactory. Relying on the decision of the Apex Court in 1988 (1) SCC 122, it is contended that the respondents ought to have regularized the petitioner's services, but on the contrary apart from doing that, when the petitioner submitted a representation for increasing his wages, his services came to be terminated.

4. The petition is resisted by the affidavit in reply filed by Deputy Executive Engineer, Karjan of the Baroda District Panchayat giving the following grounds for not continuing the petitioner in service and for not being in a position to regularize the petitioner's service :-

(i) The post for which the petitioner is claiming right is not a post sanctioned by the Government. The Government has never sanctioned the post of typist in the second respondent's office because of the fact that there is no sufficient work for a typist with respondent No. 2 office and, therefore, the petitioner was called to the office as and when the requirements arose. This can be proved from the fact that the petitioner could not complete 240 days more than once in the last four years. Thus, it would be crystal clear that the petitioner has not completed 240 days for three continuous years and, therefore also, his claim made in the representation for regularization cannot be taken into consideration.

(ii) The services of the petitioner were not satisfactory to the satisfaction of the superior officers and notices in that regard were also issued from time to time. The petitioner used to do typing work of outsiders during the office hours in the office and the petitioner was given warning, orally and in writing, not to do outside

work. Yet, he continued to do the same. A copy of the notice dated 2.11.1985 is annexed.

(iii) The Government by way of resolution, directed the authorities not to recruit "SSC pass" candidates as labour in any of the departments and, therefore, the services of the petitioner came to an end.

5. In view of the above, it is clear that there was no post of typist in the set up of the office of the second respondent and even otherwise the petitioner was not regularly recruited after following the procedure of public advertisement, test and interview etc. The petitioner, therefore, cannot claim any right to be continued on the post of typist. Moreover, the petitioner's representation for increasing his wages was made in December, 1985 whereas the notice warning the petitioner for doing the outside work was given to the petitioner on 2.11.1985. This belies the petitioner's case that the petitioner was sought to be victimized on account of the representation made for increasing his wages.

6. As far as the reliance placed on the decision of the Apex Court is concerned, that would not support the petitioner's case because it is the specific case of the respondents that apart from the fact that there is no sanctioned post of Gujarati Typist, the petitioner's services were not found satisfactory and he was also required to be given warning orally and in writing.

7. There is no substance in this petition. The petition is, therefore, dismissed.

Rule is discharged with no order as to costs.

8. It is clarified that pendency of this petition does not preclude the petitioner from making representation to the respondent authorities for getting reemployment with the respondents.

August 13, 1999 (M.S. Shah, J.)
sundar/-